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Supreme Court of the United States

October Term, 1954

No. ~~1000~~ 23

ROBERT A. McALLISTER,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

JACOB RASSNER,

Attorney for Petitioner.

Supreme Court of the United States

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PETITIONER'S REPLY BRIEF

Respondent's brief purports to assert as part of the record, proof which is not contained therein. Respondent chooses to ignore the reasons advanced by petitioner for the Writ of Certiorari, but to argue the merits of the case instead.

The authorities cited by respondent are such as would tend to support a decree, if one had been rendered by the trial court, in favor of the respondent. Such argument and supporting authorities are not persuasive. The same authorities in substance support the decree which was reversed by the court below.

Respondent closes its eyes to the fact that it is of general and tremendous importance as to whether or not less evidence will be required to sustain a decree on the law side than on the Admiralty side of the Court. The argument advanced by respondent, that the case at bar is not of sufficient importance to merit review by this Court. The fact is, it is the principle of law, which is sought to be reviewed and not the fact that one man is seeking redress for the loss of use of his arm and paralysis of the lower part of his body. There is also the charge made by peti-

tioner that he has been denied due process of law, which merits consideration by this Court.

The trial court rejected respondent's contention that flies or petitioner's fellow seamen caused or contributed to McAllister's illness and accepted the testimony of petitioner's medical experts, that the illness was the direct proximate result of the respondent's negligent acts. The respondent has no justification for asserting that other fellow seamen or flies carried the disease to McAllister when there is no such proof in the record.

No doctor gave an opinion on any fact in the record which would support such finding by the court below or justify the statement in respondent's brief that there is any such evidence in the record.

Learned and respected as is the Court below, and assuming for the sake of argument that factually it is as qualified as any member of the medical profession in point of medical knowledge, nevertheless the opinion of the Court below does not constitute a legal substitute for expert medical opinion. The complete absence of any expert medical opinion that the disease was spread in any manner other than as proven by petitioner's medical experts, gives no justification for any contrary inference than that drawn by Judge Incl., the trial judge, or for reading into the record, medical opinion of which there is no evidence.

The private or personal opinion of the Court below is no legal basis for the conclusion that inferences other than those found by the trial court were "permissible".

Respondent lays great stress on the expression by the Court below that it had some doubt as to whether the proven facts constituted negligence. The doubt was not the basis of the reversal and hence constitutes "dictum" which is no answer to a prayer of a petitioner for a Writ of Certiorari.

Respondent is guilty of asserting statements tending to give the impression that evidence, as proven in the record, supported the decision of the Court below, whereas there is no such proof in said record.

The reasons advanced in petitioner's main brief have been ignored and not answered and we respectfully pray that this Honorable Court will consider the questions raised in the case at bar as of sufficient importance to merit review by the Supreme Court of the United States.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioner.